

2006

State of Utah v. Brent E. Hill : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :
PLAINTIFF/APPELLEE, : Case No. 20060667-CA
v :
BRENT E. HILL, :
DEFENDANT/APPELLANT :

OPENING BRIEF OF APPELLANT

This is an appeal in a case involving a Class A misdemeanor charge of Carrying a Concealed Dangerous Weapon, in violation of Utah Code Ann. § 76-10-504, entered in the Second Judicial District Court for Morgan County, State of Utah, the Honorable Judge Michael D. Lyon, Judge presiding.

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UTAH APPEALS
FEB 6 2007

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JURISDICTION

Utah Code Ann. § 78-2a-3(2)(e) provides this Court's jurisdiction over appeals from a court of record in criminal cases, except those involving a conviction or charge of a first degree or capital felony.

STATEMENT OF ISSUES AND STANDARD OF REVIEW

1. The Issues were preserved in the trial Court by filing a PLEA AGREEMENT AND SERY PLEA RESERVATION OF RIGHTS TO APPEAL WEAPONS CHARGE prepared by Defendant's counsel, signed by both counsel, and filed on June 23rd, 2006, and found in the record at 00085.
2. This Court reviews the trial Court's factual findings and legal conclusions for correctness. E. g. State v. Swink, 2000 UT App 262, ¶ 6, 11p.3d 299.

CONSTITUTIONAL PROVISIONS, RULES AND STATUTES

The following statutes pertain, and are set forth in full in the addendum to this brief:

Utah Code Ann. §§ 76-10-500 (1999).

Utah Code Ann. §§ 76-10-504 (2005).

Utah Code Ann. §§ 76-10-505 (1990).

STATEMENT OF THE CASE

Defendant was stopped by a Morgan County Sheriff's deputy on August 13th, 2005 on Interstate 84 Westbound near Morgan. The arresting officer took Defendant into custody on suspicion of driving while under the influence of alcohol. At the time of his arrest, Defendant apprised the deputy that there were two hand guns in his truck, and told him of the specific location of each. The arresting officer took possession of the weapons after requesting that another deputy remove them from the location given by the defendant, while he was securing the Defendant in his patrol car. The deputy then took possession of the weapons, and after checking to see if they were loaded within the meaning of Utah Code Ann. §§76-10-502, he concluded that they were.

At Defendants motion to suppress the evidence, the Court agreed that Utah Code Ann. §§ 76-10-504 applied to the loaded weapons and denied Defendant's Motion To Suppress. Thereafter, the Defendant plead guilty to one of the concealed dangerous weapon charges, and appeals his conviction as a "Sery" plea.

STATEMENT OF FACTS

On the 13th of August, 2005 at approximately 00:55, the Defendant, traveling westbound on I 84 was stopped by a Deputy Morgan County Sheriff. After a period of

testing to determine if Defendant may be under the influence of alcohol, the Deputy arrested Defendant and placed him in the rear of his patrol vehicle. At the time of his arrest the Defendant, knowing that his truck was going to be impounded, told the Deputy that there were two hand-guns in the truck, one in the left door pocket, and another in the console between the seats. The arresting officer requested another officer on the scene to retrieve the weapons and they were secured and turned over to the arresting officer. The arresting officer took the Defendant to the Morgan County Sheriff's office and later took him to the Weber County Jail.

After the Deputy returned to duty the following day, he unwrapped the weapons which were both in closed and snapped holsters, and rolled in cloth to protect the leather of one holster, and the nylon webbing of the other. When the guns were removed from their respective holsters, the Deputy examined each by viewing each from the rear so as to check the cylinders to determine if they met the statutory standards as "loaded." The deputy found that both were "loaded" under that definition found in §§ 76-10-502 U.C.A., in that the .22 caliber device had a live round in the firing position and another live round that would have rolled to the firing position with one operation of the trigger. The other did not have a round in the firing position but one operation of the trigger would have placed a round in the firing position. The Defendant does not dispute these findings by the Deputy Sheriff which appear in the Record On Appeal as Suppression Hearing Transcript, No. 00086, at pp: 9-11.

SUMMARY OF ARGUMENT

The Appellant pled guilty to a Class A misdemeanor charge under §§ 76-10-504 after his efforts to have that charge dismissed on his Motion To Dismiss was denied by the ruling of Judge Lyon. The finding of Judge Lyon was that §§ 76-10-504 obtained, irrespective of the Defendant's having been in his own private vehicle, as opposed to the public domain. The two statutes §§ 76-10-505, and §§ 76-10-504 are mutually exclusive in that one relates to having a "loaded" firearm in a vehicle, (a private domain) and the , other relates to the public domain excepting that part of the private domain of "residence, property, or business under his control..."

It is clear that the situs for the possession of each contain class "B" misdemeanors, but the "504" provision has with it a class "A" misdemeanor (for the same offense—loaded weapon) while the "505" has only the class "B" for the "firearm's" being loaded. This situation creates the possibility that different County Attorneys, under the theory approved by Judge Lyon, could charge some persons with the greater, and some with the lesser, a situation not countenanced under the law.

ARGUMENT

Point One

Defendant was operating his privately owned vehicle on I 80 in Morgan County shortly after midnight on August 13th, 2005. One Deputy Turner of the Morgan County Sheriff's Department stopped the defendant, and after a series of tests, arrested and confined the defendant in the Deputy's patrol vehicle. During the arrest procedure the Defendant advised the Deputy that he had two weapons, pistols, in the cab of his truck. Defendant is a resident of Idaho, where the carrying of loaded weapons in a private vehicle is not prohibited. The weapons were both in a portion of the vehicle that concealed the guns from view and were holstered and wrapped in cloth to cover the guns to keep out foreign matter. The weapons both were considered by the trial court, as loaded under §§ 76-10-502, and were each in a part of the truck that concealed them from view, although, the cloth covering on each would prevent anyone who looked at the package from knowing what was contained therein. Defendant did not have a valid "concealed firearm permit" as that is described in §§ 76-10-504

It appears that the prosecution assumed it had the option to charge the Defendant under either §§ 76-10-504, or §§ 76-10-505, which decision gives rise to this appeal. The provisions of §§ 76-10-504 (1) in Paragraph 1, exclude, or exempt, the factual bases for the Class A misdemeanor charge. The language "*...in a place other than his residence, property, or a business under his control...*" must rely on "property" in the

broad all- encompassing sense, to include both real and personal property, the latter it is argued, being defendant's truck. Judge Lyon made no effort to reconcile that distinction, between §§ 76-10-505 and §§ 76-10-504, which by definition, specifically excludes Defendant's truck (as, "property"). Since the three items in Paragraph 1 of 504 are not cognizable under 504, the Defendant cannot be charged under §§ 76-10-504.

If the word "property" includes Defendant's truck, §§ 76-10-504 simply does not apply to the defendant. Appellant has found in the cases only those that apply to felonies charged under the subject statute, and, primarily deal with "restricted persons" under §§ 76-10-503. None of these cases have any bearing on the issue of whether the three exclusions -- residence, property, business-- will nevertheless permit the use of 504 as a basis for prosecution for "carrying a concealed dangerous weapon" when a personal vehicle is involved. On its face, 504 appears to have left the realm of carrying a concealed weapon to circumstances other than when the carrier was in a vehicle. The Defendant presumes, then, that this may be the first instance of an appeal from the misdemeanor provisions of either 504 or 505.

Point Two

The factual posture in which the weapons were found lends itself more to the suggestion that the weapons were not so much concealed for the unlawful, nefarious or

sinister purpose as for the purpose of keeping the weapons dry and clean. More so for the 357 than the .22, but, still, the attention given the weapons in wrapping and holstering made them much less “readily accessible for immediate use” than those prepared by a person who wanted to have them “at the ready”. In fact, they would be most capable for providing immediate use if they had been laying on the seat, cocked, in plain view, and with nothing left to be done than point and shoot. Contrasting the way they were found, the 357 was in a leather holster, with a strap around the hammer which would prevent the weapon from firing. In addition it was wrapped in several layers of cloth and placed in the side pocket on the driver’s side door. The .22 was apparently under the fold down arm rest in the seat, but it too was contained in a holster with the same restraint on the hammer. As noted above, the Deputy found the live shells in the weapons to have been so arrayed that one pull of the trigger of either would cause a round to be fired, which pursuant to §§ 76-10-502, is loaded.

Thus, the physical evidence indicates that the owner of the weapons was more concerned with the proper storage of the guns in his truck than obsessed with having the immediate access for the purpose of firing them. In that light, the provisions of §§ 76-10-501(18) define “securely encased” and the posture in which the magnum was found was certainly “securely encased” while the .22 was less so, but, it is argued, on balance, that the intention of the owner of the weapons was not to conceal them for any unlawful purpose, but to store them for the time when the need may arise.

Judge Lyon in his ruling on Defendant's Motion To Suppress seemed to take a more narrow view under the circumstances and found the packaging to reflect a more hostile motive. However, if one takes a more balance approach, it is possible to understand the motives of the Defendant in packaging them as they were found.

Photographs of the weapons in the position determined by the Deputy to best show the whole scene are found in the record at 00068 through 00070. The Defendant urges the Court to take the most practical construction of 501 (18) in its analysis of that section, keeping in mind the suggestion that hand guns cannot be "stored" in the back of the bed of the truck, there is very little more the Defendant could do than stay away from the glove box or console box, and focus on the "closed case or container, whether or not locked" to avoid criminality if the argument in Point one is not persuasive.

Judge Lyon's ruling was not reduced to writing in this case but can be found in the transcript of the Suppression Hearing, pp. 48 thru 50.

CONCLUSION

Although the crime of carrying a concealed dangerous weapon was charged, the only legitimate crime to have been available to the prosecution was that under section 505. That section make is a crime to carry a loaded firearm "in or on a vehicle". Having opted to address the fact situation under section 504, and not having charged the lesser—but not "included" offense, the County cannot sustain it's burden. It cannot rely

on the property aspects of section 504 since they remove from the purview of the section those certain individual sanctuaries that allow the "carrying" of weapons under certain circumstance, and still penalize the failure to ensure that no weapons are carried when the firearm is loaded. This seems to strike an even balance in the contest between the two sections 504 and 505. The Defendant urges the Court to dismiss the charges and Order the refund of such monies as have been paid to Morgan County and related to the pursuit of the inappropriate section, and this appeal.

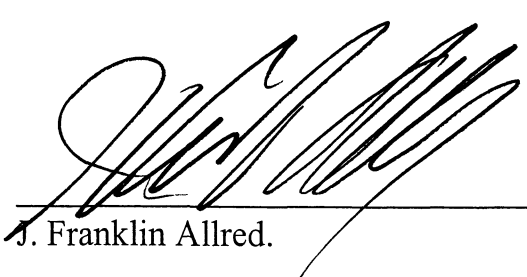

J. FRANKLIN ALLRED,
ATTORNEY FOR APPELLANT

02-23-07
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I certify that two true and correct copies of the foregoing OPENING BRIEF OF APPELLANT WAS MAILED TO:

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On this 27th Day of February, 2007


J. Franklin Allred.

ADDENDUM

PART 5 WEAPONS

76-10-500. Uniform law.

(1) The individual right to keep and bear arms being a constitutionally protected right, the Legislature finds the need to provide uniform laws throughout the state. Except as specifically provided by state law, a citizen of the United States or a lawfully admitted alien shall not be:

(a) prohibited from owning, possessing, purchasing, selling, transferring, transporting, or keeping any firearm at his place of residence, property, business, or in any vehicle lawfully in his possession or lawfully under his control; or

(b) required to have a permit or license to purchase, own, possess, transport, or keep a firearm.

(2) This part is uniformly applicable throughout this state and in all its political subdivisions and municipalities. All authority to regulate firearms shall be reserved to the state except where the Legislature specifically delegates responsibility to local authorities or state entities. Unless specifically authorized by the Legislature by statute, a local authority or state entity may not enact or enforce any ordinance, regulation, or rule pertaining to firearms.

History: C. 1953, 76-10-500, enacted by L. 1999, ch. 5, § 2.

Coordination clause. - Laws 1999, ch. 5 enacted this section, deleting similar provisions from § 76-10-501(1). Laws 1999, ch. 366, § 9 directs, in the event that chs. 5 and 366 both pass, that the amendments by ch. 366 to § 76-10-501(1), inserting "selling, transferring" and "lawfully in his possession or lawfully" in Subsection (1)(a)(i) and inserting "or state entities" in Subsection (1)(b), be merged into this section as enacted by ch. 5. The described amendments have been merged into Subsections (1) and (2) of this section, respectively, by the Office of Legislative Research and General Counsel.

Effective Dates. - Laws 1999, ch. 5 became effective on May 3, 1999, pursuant to Utah Const., Art. VI, Sec. 25.

901 538-1712

NOTES TO DECISIONS

Standing.

State university and its president had constitutional standing under U.S. Const. Art. III to bring an action seeking a judicial declaration as to the validity of the application of this part to their university policy against the possession of weapons on the campus. *Univ. of Utah v. Shurtleff*, 252 F. Supp. 2d 1264 (D. Utah 2003).

COLLATERAL REFERENCES

Utah Law Review. - The Individual Right to Bear Arms: An Illusory Public Pacifier?, 1986 Utah L. Rev. 751.

Recent Developments in Utah Law, 2000 Utah L. Rev. 841 (2000).

A Most Dangerous Experiment? University Autonomy, Academic Freedom, and the Concealed-Weapons Controversy at the University of Utah, 2003 Utah L. Rev. 983.

76-10-501. Definitions.

As used in this part:

(1) (a) "Antique firearm" means any firearm:

(i) (A) with a matchlock, flintlock, percussion cap, or similar type of ignition system; and

(B) that was manufactured in or before 1898; or

(ii) that is a replica of any firearm described in this Subsection (1)(a), if the replica:

(A) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; or

(B) uses rimfire or centerfire fixed ammunition which is:

(I) no longer manufactured in the United States; and

(II) is not readily available in ordinary channels of commercial trade; or

(iii) (A) that is a muzzle loading rifle, shotgun, or pistol; and

(B) is designed to use black powder, or a black powder substitute, and cannot use fixed ammunition.

(b) "Antique firearm" does not include:

(i) any weapon that incorporates a firearm frame or receiver;

(ii) any firearm that is converted into a muzzle loading weapon; or

(iii) any muzzle loading weapon that can be readily converted to fire fixed ammunition by replacing the:

(A) barrel;

(B) bolt;

(C) breechblock; or

(D) any combination of Subsection (1)(b)(iii)(A), (B), or (C).

(2) (a) "Concealed dangerous weapon" means a dangerous weapon that is covered, hidden, or secreted in a manner that the public would not be aware of its presence and is readily accessible for immediate use.

(b) A dangerous weapon shall not be considered a concealed dangerous weapon if it is a firearm which is unloaded and is securely encased.

(3) "Criminal history background check" means a criminal background check conducted by a licensed firearms dealer on every purchaser of a handgun through the division or the local law enforcement agency where the firearms dealer conducts business.

(4) "Curio or relic firearm" means any firearm that:

(a) is of special interest to a collector because of a quality that is not associated with firearms intended for:

(i) sporting use;

(ii) use as an offensive weapon; or

(iii) use as a defensive weapon;

(b) (i) was manufactured at least 50 years prior to the current date; and

(ii) is not a replica of a firearm described in Subsection (4)(b)(i);

(c) is certified by the curator of a municipal, state, or federal museum that exhibits firearms to be a curio or relic of museum interest;

(d) derives a substantial part of its monetary value:

(i) from the fact that the firearm is:

(A) novel;

(B) rare; or

(C) bizarre; or

(ii) because of the firearm's association with an historical:

(A) figure;

(B) period; or

(C) event; and

(e) has been designated as a curio or relic firearm by the director of the United States Treasury Department Bureau of Alcohol, Tobacco, and Firearms under 27 C.F.R. Sec. 178.11.

(5) (a) "Dangerous weapon" means any item that in the manner of its use or intended use is capable of causing death or serious bodily injury. The following factors shall be used in determining whether a knife, or any other item, object, or thing not commonly known as a dangerous weapon is a dangerous weapon:

(i) the character of the instrument, object, or thing;

(ii) the character of the wound produced, if any;

(iii) the manner in which the instrument, object, or thing was used; and

(iv) the other lawful purposes for which the instrument, object, or thing may be used.

(b) "Dangerous weapon" does not include any explosive, chemical, or incendiary device as defined by Section 76-10-306.

(6) "Dealer" means every person who is licensed under crimes and criminal procedure, 18 U.S.C. 923 and engaged in the business of selling, leasing, or otherwise transferring a handgun, whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.

(7) "Division" means the Criminal Investigations and Technical Services Division of the Department of Public Safety, created in Section 53-10-103.

(8) "Enter" means intrusion of the entire body.

(9) (a) "Firearm" means a pistol, revolver, shotgun, sawed-off shotgun, rifle or sawed-off rifle, or any device that could be used as a dangerous weapon from which is expelled a projectile by action of an explosive.

(b) As used in Sections 76-10-526 and 76-10-527, "firearm" does not include an antique firearm.

(10) "Firearms transaction record form" means a form created by the division to be completed by a person purchasing, selling, or transferring a handgun from a dealer in the state.

(11) "Fully automatic weapon" means any firearm which fires, is designed to fire, or can be readily restored to fire, automatically more than one shot without manual reloading by a single function of the trigger.

(12) (a) "Handgun" means a pistol, revolver, or other firearm of any description, loaded or unloaded, from which any shot, bullet, or other missile can be discharged, the length of which, not including any revolving, detachable, or magazine breech, does not exceed 12 inches.

(b) As used in Sections 76-10-520, 76-10-521, and 76-10-522, "handgun" and "pistol or revolver" do not include an antique firearm.

(13) "House of worship" means a church, temple, synagogue, mosque, or other building set apart primarily for the purpose of worship in which religious services are held and the main body of which is kept for that use and not put to any other use inconsistent with its primary purpose.

(14) "Prohibited area" means any place where it is unlawful to discharge a firearm.

(15) "Readily accessible for immediate use" means that a firearm or other dangerous weapon is carried on the person or within such close proximity and in such a manner that it can be retrieved and used as readily as if carried on the person.

(16) "Residence" means an improvement to real property used or occupied as a primary or secondary residence.

(17) "Sawed-off shotgun" or "sawed-off rifle" means a shotgun having a barrel or barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or barrels of fewer than 16 inches in length, or any dangerous weapon made from a rifle or shotgun by alteration, modification, or otherwise, if the weapon as modified has an overall length of fewer than 26 inches.

(18) "Securely encased" means not readily accessible for immediate use, such as held in a gun rack, or in a closed case or container, whether or not locked, or in a trunk or other storage area of a motor vehicle, not including a glove box or console box.

(19) "State entity" means each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.

(20) "Violent felony" means the same as defined in Section 76-3-203.5.

History: C. 1953, 76-10-501, enacted by L. 1973, ch. 196, § 76-10-501; 1974, ch. 32, § 27; 1985, ch. 35, § 1; 1991, ch. 10, § 11; 1993, ch. 234, § 381; 1994, ch. 19, § 1; 1994, ch. 151, § 1; 1995, ch. 80, § 1; 1995, ch. 285, § 1; 1998, ch. 263, § 57; 1999, ch. 5, § 3; 1999, ch. 97, § 7; 1999, ch. 366, § 6; 2000, ch. 303, § 4; 2001, ch. 111, § 1.

Amendment Notes. - The 1999 amendment by ch. 5, effective May 3, 1999, deleted former Subsection (1), concerning an individual's right to keep and bear arms, and redesignated the following subsections accordingly. For provisions comparable to those deleted from this section, see § 76-10-500.

The 1999 amendment by ch. 97, effective May 3, 1999, added Subsection (2)(d)(ii) (Subsection (4)(b) in the reconciled version) and made related designation changes.

The 1999 amendment by ch. 366, effective May 3, 1999, made several changes in Subsection (1), which was deleted from this section by ch. 5 (see § 76-10-500 for comparable provisions) and added the definitions of "enter," "house of worship," "residence," and "state entity," redesignating subsections accordingly.

The 2000 amendment, effective May 1, 2000, deleted former Subsection (2), which defined "crime of violence," added Subsection (18), and redesignated subsections accordingly.

The 2001 amendment, effective April 30, 2001, added Subsections (1), (4), (9)(b), and (12)(b) and redesignated subsections accordingly.

Coordination clause. - Laws 1999, ch. 366, § 9 directs, in the event that chs. 5 and 366 both pass, that the definitions added to Subsection (2) by ch. 366 be merged into this section as amended by ch. 5.

Cross-References. - Bus Passenger Safety Act, offenses related to dangerous weapons or firearms, §§ 76-10-1504, 76-10-1505, 76-10-1507.

NOTES TO DECISIONS

Analysis

Constitutionality.

Ownership.
Parolees.
Possession, custody, or control.
Rifle as "firearm."
Search and seizure.
Severance from other charges.
Cited.

Constitutionality.

Former section, enacted under the authority of Art. I, § 6 of the Utah Constitution for the purpose of safeguarding the public peace and security, was a proper exercise of the police powers of the state; the Fourteenth Amendment of the Federal Constitution is not generally applied to restrict the police powers of the state. *State v. Beorchia*, 530 P.2d 813 (Utah 1974).

Conviction of an alien under former section for possession of a firearm was not unconstitutional. *State v. Vlacil*, 645 P.2d 677 (Utah 1982).

Constitutionality of statute proscribing possession of guns by a restricted person was to be determined with reference to the constitutional provision regarding the right to bear arms in effect at the time of the defendant's arrest; constitutional provision that went into effect some six months later was not to be given retroactive effect. *State v. Wacek*, 703 P.2d 296 (Utah 1985).

Because Subsection (2)(a) did not unconstitutionally interfere with right to bear arms but only restricted that right under very limited circumstances, defendant's conviction for violating the statute was affirmed. *State v. Willis*, 2002 UT App 229, 451 Utah Adv. Rep. 12, 52 P.3d 461, *aff'd*, 2004 UT 93, 100 P.3d 1218 (2004).

Aliens.

State regulation of the possession of firearms by aliens has not been preempted by federal law. *State v. Vlacil*, 645 P.2d 677 (Utah 1982).

Conviction.

This statute applied to prohibit possession of a firearm by one who had pled guilty to a felony but had not yet been sentenced. Because the purpose of this statute is to restrict one's possession of a handgun upon an indication that one may be a danger to society, the context indicates that "convicted" includes a plea or verdict of guilt and does not require a later judgment of conviction at sentencing. *State v. In*, 2000 UT App 358, 18 P.3d 500.

Crime of violence.

Crime of violence.

"Dangerous weapon."

- Unloaded gun.

Jury instructions.

Cited.

Constitutionality.

This section provided defendant adequate notice that his knives and blowgun were "dangerous weapons," and was therefore not unconstitutionally vague as applied to him. *State v. Archambeau*, 820 P.2d 920 (Utah Ct. App. 1991).

Crime of violence.

Burglary conviction made defendant a restricted person under § 76-10-503 notwithstanding the fact that defendant had been sentenced on the burglary charge as if for a misdemeanor. Sentence reduction lowers classification of a crime but does not change the substance of the offense. *State v. Gurr*, 904 P.2d 238 (Utah Ct. App. 1995).

"Dangerous weapon."

Defendant's two 10-inch knives with 5- and 6-inch blades and his 48-inch blowgun were "dangerous weapons" within the meaning of the statute. *State v. Archambeau*, 820 P.2d 920 (Utah Ct. App. 1991).

Defendant's knife, which was about 9 1/2 inches long including a 4 1/2 inch blade, was a dangerous weapon within the meaning of the statute. *State v. Pugmire*, 898 P.2d 271 (Utah Ct. App. 1995), cert. denied, 910 P.2d 425 (Utah 1995).

- Unloaded gun.

Since the defendant's gun, although unloaded and accompanied by a faulty ammunition clip, could be loaded and fired, it met the statutory definition of "dangerous weapon." *State v. Davis*, 711 P.2d 232 (Utah 1985).

Jury instructions.

Jury instructions which stated that to convict defendant he must have "had a gun in his possession" and that "a pistol-type handgun is a dangerous weapon" under law, but that "gun clip alone with or without cartridges is not a dangerous weapon" were not error because consonant with statute and not prejudicial to defendant. *State v. Nielsen*, 544 P.2d 489 (Utah 1975), cert. denied, 425 U.S. 906, 96 S. Ct. 1500, 47 L.

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Ed. 2d 757 (1976).

Cited in State v. Walker, 765 P.2d 874 (Utah 1988).

COLLATERAL REFERENCES

Am. Jur. 2d. - 79 Am. Jur. 2d Weapons and Firearms § 1.

C.J.S. - 94 C.J.S. Weapons § 1.

A.L.R. - Validity of statute proscribing possession or carrying of knife, 47 A.L.R.4th 651.

Fact that gun was unloaded as affecting criminal responsibility, 68 A.L.R.4th 507.

Fact that gun was broken, dismantled, or inoperable as affecting criminal responsibility under weapons statute, 81 A.L.R.4th 745.

Scope and effect of exception, in statute forbidding carrying of weapons, as to person on his own premises or at his place of business, 57 A.L.R.3d 938.

Validity of state gun control legislation under state constitutional provisions securing the right to bear arms, 86 A.L.R.4th 931.

Validity, construction, and application of state or local law prohibiting manufacture, possession, or transfer of "assault weapon," 29 A.L.R.5th 664.

76-10-502. When weapon deemed loaded.

(1) For the purpose of this chapter, any pistol, revolver, shotgun, rifle, or other weapon described in this part shall be deemed to be loaded when there is an unexpended cartridge, shell, or projectile in the firing position.

(2) Pistols and revolvers shall also be deemed to be loaded when an unexpended cartridge, shell, or projectile is in a position whereby the manual operation of any mechanism once would cause the unexpended cartridge, shell, or projectile to be fired.

(3) A muzzle loading firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinders.

History: C. 1953, 76-10-502, enacted by L. 1973, ch. 196, § 76-10-502; 1974, ch. 32, § 28; 1990, ch. 328, § 1.

NOTES TO DECISIONS

Cited in State v. Chapman, 921 P.2d 446 (Utah 1995):

COLLATERAL REFERENCES

Am. Jur. 2d. - 79 Am. Jur. 2d Weapons and Firearms § 3.

76-10-503. Restrictions on possession, purchase, transfer, and ownership of dangerous weapons by certain persons.

(1) For purposes of this section:

(a) A Category I restricted person is a person who:

(i) has been convicted of any violent felony as defined in Section 76-3-203.5;

(ii) is on probation or parole for any felony;

(iii) is on parole from a secure facility as defined in Section 62A-7-101; or

(iv) within the last ten years has been adjudicated delinquent for an offense which if committed by an adult would have been a violent felony as defined in Section 76-3-203.5.

(b) A Category II restricted person is a person who:

(i) has been convicted of or is under indictment for any felony;

(ii) within the last seven years has been adjudicated delinquent for an offense which if committed by an adult would have been a felony;

(iii) is an unlawful user of a controlled substance as defined in Section 58-37-2;

(iv) is in possession of a dangerous weapon and is knowingly and intentionally in unlawful possession of a Schedule I or II controlled substance as defined in Section 58-37-2;

(v) has been found not guilty by reason of insanity for a felony offense;

(vi) has been found mentally incompetent to stand trial for a felony offense;

(vii) has been adjudicated as mentally defective as provided in the Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993), or has been committed to a mental institution;

(viii) is an alien who is illegally or unlawfully in the United States;

(ix) has been dishonorably discharged from the armed forces; or

(x) has renounced his citizenship after having been a citizen of the United States.

(2) A Category I restricted person who intentionally or knowingly agrees, consents, offers, or arranges to purchase, transfer, possess, use, or have under his custody or control, or who intentionally or knowingly purchases, transfers, possesses, uses, or has under his custody or control:

(a) any firearm is guilty of a second degree felony; or

(b) any dangerous weapon other than a firearm is guilty of a third degree felony.

(3) A Category II restricted person who purchases, transfers, possesses, uses, or has under his custody or control:

(a) any firearm is guilty of a third degree felony; or

(b) any dangerous weapon other than a firearm is guilty of a class A misdemeanor.

(4) A person may be subject to the restrictions of both categories at the same time.

(5) If a higher penalty than is prescribed in this section is provided in another section for one who purchases, transfers, possesses, uses, or has under this custody or control any dangerous weapon, the penalties of that section control.

(6) It is an affirmative defense to a charge based on the definition in Subsection (1)(b)(iv) that the person was:

(a) in possession of a controlled substance pursuant to a lawful order of a practitioner for use of a member of the person's household or for administration to an animal owned by the person or a member of the person's household; or

(b) otherwise authorized by law to possess the substance.

History: C. 1953, 76-10-503, enacted by L. 2000, ch. 303, § 5; 2003, ch. 203, § 2; 2003, ch. 235, § 1.

Repeals and Reenactments. - Laws 2000, ch. 303, § 5 repeals former § 76-10-503, as enacted by L. 1973, ch. 196, § 76-10-503, relating to weapons, and enacts the present section, effective May 1, 2000.

Laws 2000, ch. 90 attempted to amend this section, but the repeal and reenactment by ch. 303 was given precedence by the Office of Legislative Research and General Counsel.

Amendment Notes. - The 2003 amendment by ch. 203, effective May 5, 2003, inserted "or II" after "Schedule I" in Subsection (1)(b)(iv) and added Subsection (6).

The 2003 amendment by ch. 235, effective May 5, 2003, inserted "intentionally or knowingly agrees, consents, offers, or arranges to purchase, transfer, possess, use, or have under his custody or control, or who intentionally or knowingly" in Subsection (2).

This section has been reconciled by the Office of Legislative Research and General Counsel.

Federal Law. - The Brady Handgun Violence Prevention Act, cited in Subsection (1)(b)(vii), is codified mainly as 18 USCS § 921 et seq.

Cross-References. - Alien's right to hunting licenses and certificates, § 23-19-4.

NOTES TO DECISIONS

Analysis

Constitutionality.

Aliens.

Conviction.

Crime of violence.

Dangerous weapon.

Evidence.

- Sufficient.

Ex post facto.

Jury instructions.

Prior conviction of assault with a deadly weapon with intent to do bodily harm was sufficient predicate under former section (restricting possession by one "convicted of any crime of violence") for conviction for illegal possession of a firearm. State v. Coleman, 540 P.2d 953 (Utah 1975).

Persons restricted from possessing dangerous weapons are restricted once they have been convicted of one or more of the enumerated offenses regardless of how the crime was classified and regardless of the sentence imposed. State v. Gurr, 904 P.2d 238 (Utah Ct. App. 1995).

Defendant's conviction of burglary, then a crime of violence under § 76-10-501, made him a restricted person under this section notwithstanding the fact that he was given a misdemeanor sentence for the burglary. Sentence reduction lowers classification of crime but does not change substance of the offense for purposes of § 76-10-501. State v. Gurr, 904 P.2d 238 (Utah Ct. App. 1995).

Dangerous weapon.

Defendant's knife, which was about 9 1/2 inches long including a 4 1/2 inch blade, was a dangerous weapon within the meaning of the statute. State v. Pugmire, 898 P.2d 271 (Utah Ct. App. 1995), cert. denied, 910 P.2d 425 (Utah 1995).

Evidence.

- Sufficient.

Sufficient evidence to support conviction. See State v. Heaps, 711 P.2d 257 (Utah 1985).

Where the prosecution presented testimony regarding the defendant's use of and attempts to dispose of a weapon, there was sufficient evidence for the jury to reasonably conclude that he possessed a dangerous weapon and tampered with evidence. State v. Harley, 1999 UT App 197, 982 P.2d 1145, cert. denied, 994 P.2d 1271 (Utah 1999).

Ex post facto.

Former section was not an ex post facto law as applied to defendant who had been convicted of a crime of violence (assault with a deadly weapon) prior to enactment of statute. State v. Coleman, 540 P.2d 953 (Utah 1975).

Jury instructions.

Jury instructions stating that to convict defendant he must have "had a gun in his possession" and that "a pistol-type handgun is a dangerous weapon" were not error because consonant with statute and not

prejudicial to defendant. State v. Nielsen, 544 P.2d 489 (Utah 1975), cert. denied, 425 U.S. 906, 96 S. Ct. 1500, 47 L. Ed. 2d 757 (1976).

Ownership.

Trial court properly dismissed claim against city for destruction of seized firearms because the owner was prohibited by this section from possessing or owning the firearms at the time they were destroyed and, as a result, his claim for conversion failed as a matter of law. Jones v. Salt Lake City Corp., 2003 UT App 355, 485 Utah Adv. Rep. 10, 78 P.3d 988, cert. denied, 90 P.3d 1041 (Utah 2004).

Parolees.

Testimony by a Colorado parole officer that defendant was under his supervision did not permit inference that the parole was from a felony conviction since parole officer had no personal knowledge of the conviction; copies of Colorado court records certified by a notary public who had no custody of the documents were not properly authenticated and could not be received in evidence as proof that defendant had been convicted of a felony. State v. Lamorie, 610 P.2d 342 (Utah 1980).

Possession, custody, or control.

Ownership of a handgun does not solely determine "possession, custody, or control" of the gun; all that is required is a willing and knowing possession with the intent to control the gun's use or management. State v. Davis, 711 P.2d 232 (Utah 1985).

Presence of guns in defendant's trailer was sufficient to convict defendant of possession of a dangerous weapon; although defendant did not own the guns, he knew guns were in trailer in which only he resided. State v. Gurr, 904 P.2d 238 (Utah Ct. App. 1995).

Defendant who used a gun to shoot his estranged wife was properly convicted of possession of a dangerous weapon by a restricted person. State v. Todd, 2004 UT App 266, 506 Utah Adv. Rep. 9, 98 P.3d 46.

Rifle as "firearm."

A rifle was a "firearm" within former section even though section did not specifically refer to a rifle or define it as a firearm. State v. Coleman, 540 P.2d 953 (Utah 1975).

Search and seizure.

Although alone, each of the factors of past criminal activity, nervousness, anger, and travelling back from a known drug community would not support reasonable suspicion, when combined with the facts of the case, including report from an experienced trooper who was also father of one of the defendants, they

justified reasonable suspicion to warrant an investigatory stop of defendants' car and eventual discovery of drugs and weapon. *State v. Humphrey*, 937 P.2d 137 (Utah Ct. App. 1997).

Severance from other charges.

Defendant convicted of possession of a dangerous weapon by a restricted person was not prejudiced by counsel's failure to sever the charge from other charges of aggravated burglary and theft so as to keep prior felony convictions from the jury, as the weight of the evidence against the defendant was substantial and the evidence could have been introduced under Utah R. Evid. 609 in any event. *Seel v. Van Der Veur*, 971 P.2d 924 (Utah 1998).

Cited in *State v. Tuttle*, 780 P.2d 1203 (Utah 1989), cert. denied, 494 U.S. 1018, 110 S. Ct. 1323, 108 L. Ed. 2d 498 (1990); *State v. Archambeau*, 820 P.2d 920 (Utah Ct. App. 1991); *State v. Montoya*, 929 P.2d 356 (Utah Ct. App. 1996).

COLLATERAL REFERENCES

Utah Law Review. - Note, Enhancing Penalties by Admitting "Bad Character" Evidence During the Guilt Phase of Criminal Trials - *State v. Bishop*, 1989 Utah L. Rev. 1013.

Am. Jur. 2d. - 79 Am. Jur. 2d Weapons and Firearms § 29.

C.J.S. - 94 C.J.S. Weapons § 2.

A.L.R. - What amounts to "control" under state statute making it illegal for felon to have possession or control of firearm or other dangerous weapon, 66 A.L.R.4th 1240.

What constitutes "constructive possession" of unregistered or otherwise prohibited weapon under state law, 88 A.L.R.5th 121.

76-10-504. Carrying concealed dangerous weapon - Penalties.

(1) Except as provided in Section 76-10-503 and in Subsections (2) and (3):

(a) a person who carries a concealed dangerous weapon, as defined in Section 76-10-501, which is not a firearm on his person or one that is readily accessible for immediate use which is

not securely encased, as defined in this part, in a place other than his residence, property, or business under his control is guilty of a class B misdemeanor; and

(b) a person without a valid concealed firearm permit who carries a concealed dangerous weapon which is a firearm and that contains no ammunition is guilty of a class B misdemeanor, but if the firearm contains ammunition the person is guilty of a class A misdemeanor.

(2) A person who carries concealed a sawed-off shotgun or a sawed-off rifle is guilty of a second degree felony.

(3) If the concealed firearm is used in the commission of a violent felony as defined in Section 76-3-203.5, and the person is a party to the offense, the person is guilty of a second degree felony.

(4) Nothing in Subsection (1) shall prohibit a person engaged in the lawful taking of protected or unprotected wildlife as defined in Title 23, Wildlife Resources Code, from carrying a concealed weapon or a concealed firearm with a barrel length of four inches or greater as long as the taking of wildlife does not occur:

(a) within the limits of a municipality in violation of that municipality's ordinances; or

(b) upon the highways of the state as defined in Section 41-6a-102.

History: C. 1953, 76-10-504, enacted by L. 1995, ch. 80, § 2; 1997, ch. 289, § 13; 2000, ch. 303, § 6; 2005, ch. 2, § 302.

Repeals and Reenactments. - Laws 1995, ch. 80, § 2 repeals former § 76-10-504, as enacted by Laws 1982, ch. 17, § 1, relating to carrying concealed dangerous weapons, and enacts the present section, effective May 1, 1995.

Amendment Notes. - The 2000 amendment, effective May 1, 2000, substituted "violent felony" for "crime of violence" and "Section 76-3-203.5" for "Section 76-10-501" in Subsection (3) and corrected a reference.

The 2005 amendment, effective February 2, 2005, substituted "Section 41-6a-102" for "Section 41-6-1" in Subsection (4)(b).

NOTES TO DECISIONS

Analysis

Burden of proof.

"Carrying."

Construction with other law.

Lesser included offenses.

Mental state.

Burden of proof.

State is not required to prove lack of a permit because the possession of a valid concealed firearm permit is an affirmative defense. *State v. Smith*, 2005 UT 57, 122 P.3d 615.

"Carrying."

A person will be deemed to be "carrying" a concealed weapon if the weapon is shown to be under the person's control and within his immediate, easy or ready access; it is not required that the weapon be upon one's person to constitute "carrying" within the meaning of this section. *State v. Williams*, 636 P.2d 1092 (Utah 1981).

Construction with other law.

Statute was most properly characterized as an enhancement statute to which the legislature did not intend merger to apply. The penalties imposed by the statute increased proportionally to the increased risk to the public, and this graduated punishment scale was indicative of an enhancement statute. Therefore, defendant's claim that his aggravated assault charges should have merged with the concealed weapon charge was without merit. *State v. Smith*, 2003 UT App 52, 467 Utah Adv. Rep. 25, 65 P.3d 648.

Lesser included offenses.

The offense of carrying a loaded firearm in a vehicle, § 76-10-505, is not a necessarily included offense of carrying a concealed dangerous weapon. *State v. Williams*, 636 P.2d 1092 (Utah 1981).

The crime of carrying a concealed dangerous weapon is a lesser included offense of second-degree felony retail theft when the retail theft is made a felony by the actor's being armed with a deadly weapon in the course of the crime. *State v. Kinsey*, 797 P.2d 424 (Utah Ct. App. 1990).

A defendant convicted under this section for firing a pistol from a moving vehicle into another moving vehicle was not entitled to a jury instruction on the lesser included offense of carrying a loaded firearm in a vehicle, as the pistol in this case was used to fire bullets into another car and therefore there could be no rational basis for acquitting the defendant of carrying a concealed dangerous weapon and convicting him instead of simply carrying a loaded firearm in a vehicle. *State v. Parra*, 972 P.2d 924 (Utah Ct. App. 1998).

Aggravated assault under § 76-5-103 is not a lesser included offense of use of a concealed weapon

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under this section because Subsection (3) is an enhancement provision, to which the merger doctrine under § 76-1-402 does not apply. *State v. Smith*, 2005 UT 57, 122 P.3d 615.

Mental state.

This section does not specify a culpable mental state. Thus, contrary to defendant's argument, the State was not required to prove intent or knowledge; rather, where the evidence was sufficient to show that defendant's conduct was reckless, the State has met its burden. *State v. Smith*, 2003 UT App 52, 467 Utah Adv. Rep. 25, 65 P.3d 648.

COLLATERAL REFERENCES

Am. Jur. 2d. - 79 Am. Jur. 2d Weapons and Firearms § 8.

C.J.S. - 94 C.J.S. Weapons § 3.

A.L.R. - Validity and construction of gun control laws, 28 A.L.R.3d 845.

Scope and effect of exception, in statute forbidding carrying of weapons, as to person on his own premises or at his place of business, 57 A.L.R.3d 938.

76-10-505. Carrying loaded firearm in vehicle, on street, or in prohibited area.

(1) Unless otherwise authorized by law, a person may not carry a loaded firearm:

- (a) in or on a vehicle;
- (b) on any public street; or
- (c) in a posted prohibited area.

(2) A violation of this section is a class B misdemeanor.

History: C. 1953, 76-10-505, enacted by L. 1973, ch. 196, § 76-10-505; 1990, ch. 328, § 2.

NOTES TO DECISIONS

Analysis

Defenses.

Lesser included offense.

Defenses.

In defendant's prosecution under the Assimilative Crimes Act, 18 USCS § 13, of carrying a loaded firearm in a vehicle or on a public street in violation of this section, his defense on Second Amendment grounds failed because his possession was not affiliated with a state militia. *United States v. Parker*, 362 F.3d 1279 (10th Cir. 2004), cert. denied, 543 U.S. 874, 125 S. Ct. 88, 160 L. Ed. 2d 124 (2004).

Lesser included offense.

The offense of carrying a loaded firearm in a vehicle is not a necessarily included offense of carrying a concealed dangerous weapon, § 76-10-504. *State v. Williams*, 636 P.2d 1092 (Utah 1981).

COLLATERAL REFERENCES

Am. Jur. 2d. - 79 Am. Jur. 2d Weapons and Firearms § 12.

C.J.S. - 94 C.J.S. Weapons § 8.

A.L.R. - Validity and construction of statute or ordinance specifically criminalizing passenger misconduct on public transportation, 78 A.L.R.4th 1127.

76-10-505.5. Possession of a dangerous weapon, firearm, or sawed-off shotgun on or about school premises - Penalties.

(1) A person may not possess any dangerous weapon, firearm, or sawed-off shotgun, as

level dangerous to human life and that is used or intended to be used as a weapon; or

(v) any substance or material or combination which has been prepared or altered for use in the creation of a weapon described in Subsections (6)(a)(i) through (iv).

(b) "Weapon of mass destruction" does not include firearms or rifle, pistol, or shotgun ammunition, reloading components, or muzzleloading equipment.

2002

76-10-402. Manufacture, possession, sale, use, or attempted use of a weapon of mass destruction prohibited — Penalties.

A person who without lawful authority intentionally or knowingly manufactures, possesses, sells, delivers, displays, uses, attempts to use, solicits the use of, or conspires to use a weapon of mass destruction or a delivery system for a weapon of mass destruction, including any biological agent, toxin, vector, or delivery system as those terms are defined in this section, is guilty of a first degree felony.

2002

76-10-403. Manufacture, possession, sale, use, or attempted use of a hoax weapon of mass destruction prohibited — Penalty.

Any person who without lawful authority intentionally or knowingly manufactures, possesses, sells, delivers, displays, uses, attempts to use, solicits the use of, or conspires to use a hoax weapon of mass destruction with the intent to deceive or otherwise mislead another person into believing that the hoax weapon of mass destruction is a weapon of mass destruction is guilty of a second degree felony.

2002

76-10-404. Exemptions.

This part does not apply to any member or employee of the Armed Forces of the United States, allied armed forces personnel, a federal or state governmental agency, or a private entity, who is engaged in lawful activity within the scope of his or her employment, if the person is authorized or licensed to manufacture, possess, sell, deliver, display, or otherwise engage in activity relative to this section and if the person is in compliance with applicable federal and state law.

2002

76-10-405. Reimbursement of government response expenses.

In addition to any other penalty authorized by law, a court shall order any person convicted of any violation of this part to reimburse any federal, state, or local unit of government, or any private business, organization, individual, or entity for all expenses and losses incurred in responding to the violation, unless the court states on the record the reasons why the reimbursement would be inappropriate.

2002

PART 5

WEAPONS

76-10-500. Uniform law.

(1) The individual right to keep and bear arms being a constitutionally protected right, the Legislature finds the need to provide uniform laws throughout the state. Except as specifically provided by state law, a citizen of the United States or a lawfully admitted alien shall not be:

(a) prohibited from owning, possessing, purchasing, selling, transferring, transporting, or keeping any firearm at his place of residence, property, business, or in any vehicle lawfully in his possession or lawfully under his control; or

(b) required to have a permit or license to purchase, own, possess, transport, or keep a firearm.

(2) This part is uniformly applicable throughout this state and in all its political subdivisions and municipalities. All authority to regulate firearms shall be reserved to the state except where the Legislature specifically delegates responsibility to local authorities or state entities. Unless specifically authorized by the Legislature by statute, a local authority or state entity may not enact or enforce any ordinance, regulation, or rule pertaining to firearms.

1999

76-10-501. Definitions.

As used in this part:

(1) (a) "Antique firearm" means any firearm:

(i) (A) with a matchlock, flintlock, percussion cap, or similar type of ignition system; and

(B) that was manufactured in or before 1898; or

(ii) that is a replica of any firearm described in this Subsection (1)(a), if the replica:

(A) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; or

(B) uses rimfire or centerfire fixed ammunition which is:

(I) no longer manufactured in the United States; and

(II) is not readily available in ordinary channels of commercial trade; or

(iii) (A) that is a muzzle loading rifle, shotgun, or pistol; and

(B) is designed to use black powder, or a black powder substitute, and cannot use fixed ammunition.

(b) "Antique firearm" does not include:

(i) any weapon that incorporates a firearm frame or receiver;

(ii) any firearm that is converted into a muzzle loading weapon; or

(iii) any muzzle loading weapon that can be readily converted to fire fixed ammunition by replacing the:

(A) barrel;

(B) bolt;

(C) breechblock; or

(D) any combination of Subsection (1)(b)(iii)(A), (B), or (C).

(2) (a) "Concealed dangerous weapon" means a dangerous weapon that is covered, hidden, or secreted in a manner that the public would not be aware of its presence and is readily accessible for immediate use.

(b) A dangerous weapon shall not be considered a concealed dangerous weapon if it is a firearm which is unloaded and is securely encased.

(3) "Criminal history background check" means a criminal background check conducted by a licensed firearms dealer on every purchaser of a handgun through the division or the local law enforcement agency where the firearms dealer conducts business.

(4) "Curio or relic firearm" means any firearm that:

(a) is of special interest to a collector because of a quality that is not associated with firearms intended for:

(i) sporting use;

(ii) use as an offensive weapon; or

(iii) use as a defensive weapon;

(b) (i) was manufactured at least 50 years prior to the current date; and

(ii) is not a replica of a firearm described in Subsection (4)(b)(i);

(c) is certified by the curator of a municipal, state, or federal museum that exhibits firearms to be a curio or relic of museum interest;

of a Schedule I or II controlled substance as defined in Section 58-37-2;

(v) has been found not guilty by reason of insanity for a felony offense;

(vi) has been found mentally incompetent to stand trial for a felony offense;

(vii) has been adjudicated as mentally defective as provided in the Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993), or has been committed to a mental institution;

(viii) is an alien who is illegally or unlawfully in the United States;

(ix) has been dishonorably discharged from the armed forces; or

(x) has renounced his citizenship after having been a citizen of the United States.

(2) A Category I restricted person who intentionally or knowingly agrees, consents, offers, or arranges to purchase, transfer, possess, use, or have under his custody or control, or who intentionally or knowingly purchases, transfers, possesses, uses, or has under his custody or control:

(a) any firearm is guilty of a second degree felony; or

(b) any dangerous weapon other than a firearm is guilty of a third degree felony.

(3) A Category II restricted person who purchases, transfers, possesses, uses, or has under his custody or control:

(a) any firearm is guilty of a third degree felony; or

(b) any dangerous weapon other than a firearm is guilty of a class A misdemeanor.

(4) A person may be subject to the restrictions of both categories at the same time.

(5) If a higher penalty than is prescribed in this section is provided in another section for one who purchases, transfers, possesses, uses, or has under this custody or control any dangerous weapon, the penalties of that section control.

(6) It is an affirmative defense to a charge based on the definition in Subsection (1)(b)(iv) that the person was:

(a) in possession of a controlled substance pursuant to a lawful order of a practitioner for use of a member of the person's household or for administration to an animal owned by the person or a member of the person's household, or

(b) otherwise authorized by law to possess the substance. 2003

76-10-504. Carrying concealed dangerous weapon — Penalties.

(1) Except as provided in Section 76-10-503 and in Subsections (2) and (3):

(a) a person who carries a concealed dangerous weapon, as defined in Section 76-10-501, which is not a firearm on his person or one that is readily accessible for immediate use which is not securely encased, as defined in this part, in a place other than his residence, property, or business under his control is guilty of a class B misdemeanor, and

(b) a person without a valid concealed firearm permit who carries a concealed dangerous weapon which is a firearm and that contains no ammunition is guilty of a class B misdemeanor, but if the firearm contains ammunition the person is guilty of a class A misdemeanor.

(2) A person who carries concealed a sawed-off shotgun or a sawed-off rifle is guilty of a second degree felony.

(3) If the concealed firearm is used in the commission of a violent felony as defined in Section 76-3-203 5, and the person is a party to the offense, the person is guilty of a second degree felony.

(4) Nothing in Subsection (1) shall prohibit a person engaged in the lawful taking of protected or unprotected wildlife as defined in Title 23, Wildlife Resources Code, from carrying

a concealed weapon or a concealed firearm with a barrel length of four inches or greater as long as the taking of wildlife does not occur:

(a) within the limits of a municipality in violation of that municipality's ordinances; or

(b) upon the highways of the state as defined in Section 41-6a-102. 2005

76-10-505. Carrying loaded firearm in vehicle, on street, or in prohibited area.

(1) Unless otherwise authorized by law, a person may not carry a loaded firearm:

(a) in or on a vehicle;

(b) on any public street; or

(c) in a posted prohibited area

(2) A violation of this section is a class B misdemeanor. 1990

76-10-505.5. Possession of a dangerous weapon, firearm, or sawed-off shotgun on or about school premises — Penalties.

(1) A person may not possess any dangerous weapon, firearm, or sawed-off shotgun, as those terms are defined in Section 76-10-501, at a place that the person knows, or has reasonable cause to believe, is on or about school premises as defined in Subsection 76-3-203.2(1).

(2) (a) Possession of a dangerous weapon on or about school premises is a class B misdemeanor.

(b) Possession of a firearm or sawed-off shotgun on or about school premises is a class A misdemeanor.

(3) This section does not apply if:

(a) the person is authorized to possess a firearm as provided under Section 53-5-704, 53-5-705, 76-10-511, or 76-10-523, or as otherwise authorized by law;

(b) the possession is approved by the responsible school administrator;

(c) the item is present or to be used in connection with a lawful, approved activity and is in the possession or under the control of the person responsible for its possession or use, or

(d) the possession is:

(i) at the person's place of residence or on the person's property;

(ii) in any vehicle lawfully under the person's control, other than a vehicle owned by the school or used by the school to transport students, or

(iii) at the person's place of business which is not located in the areas described in Subsection 76-3-203 2(1)(a)(i), (ii), or (iv).

(4) This section does not prohibit prosecution of a more serious weapons offense that may occur on or about school premises. 2003

76-10-506. Threatening with or using dangerous weapon in fight or quarrel.

Every person, except those persons described in Section 76-10-503, who, not in necessary self defense in the presence of two or more persons, draws or exhibits any dangerous weapon in an angry and threatening manner or unlawfully uses the same in any fight or quarrel is guilty of a class A misdemeanor. 1992

76-10-507. Possession of deadly weapon with intent to assault.

Every person having upon his person any dangerous weapon with intent to unlawfully assault another is guilty of a class A misdemeanor. 1973

76-10-508. Discharge of firearm from a vehicle, near a highway, or in direction of any person, building, or vehicle — Penalties.

(1) (a) A person may not discharge any kind of dangerous weapon or firearm: